

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**3. Calculations Based Upon A Market Share Allocation Approach
Isolating Lost Sales Caused By At-Issue Advertising And Using
A Correct Incremental Profit Margin**

83. As described above, Dr. Bell's claimed lost profits calculation (a) failed to apportion lost profits only to those sales attributable to the at-issue advertising and (b) [REDACTED]

[REDACTED]

[REDACTED] The impact on C&D's claimed lost profits from these decisions made by Dr. Bell can be demonstrated through an adjustment to Dr. Bell's calculations that account for these flaws (i.e., by apportioning Weeks Estimator sales using the results from the Poret Survey and [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

86. The results of these adjustments to Dr. Bell's lost profits calculation are contained in **Table 8** below, with highlighted rows representing the adjustments (i.e., (a) apportioning lost sales to the at-issue advertising and (b) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

87. A market share allocation approach as presented above calculates lost sales in proportion to First Response's market share rather than assuming all Weeks Estimator sales attributable to the at-issue advertising would have gone to First Response. This calculation is consistent with deposition testimony from Ms. Bishop, who testified that had Weeks Estimator been successful, some of its historical sales could have gone to other participants in the market and not all of them would have gone to First Response.²⁶⁴

advertising on First Response profits. For example, a market share allocation such as the approach used by Dr. Bell (and in the adjusted calculation presented above) would not take into account

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

-
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

[REDACTED]

[REDACTED]

89. In an attempt to demonstrate that the assumptions underlying Dr. Bell's market share allocation approach were correct, Dr. Bell submitted results from three regression analyses.²⁷⁰ Dr. Bell concluded from these that his market share allocation approach is conservative.²⁷¹ However, Dr. Bell's regression analysis suffers from numerous flaws, rendering such a conclusion inappropriate and unreliable.²⁷² In fact, because of the numerous flaws and limitations, no reliable conclusion can be drawn from Dr. Bell's regression analysis.

90. In light of (a) the evidence presented in **Section IX** regarding various factors and market events that affected First Response's sales over the damages period and (b)

[REDACTED]

[REDACTED], the calculations presented above under the market share allocation approach likely overstate the impact of Weeks Estimator on First Response sales. Therefore, the lost profits

²⁷⁰ Dr. Bell did not use the regressions to determine the claimed lost profits figure. Rather, Dr. Bell only used the regressions to claim that a market share allocation approach is conservative. Dr. Bell used two of these regressions to attempt to demonstrate that First Response lost sales in an amount at least proportionate to its relative market share: (a) an original regression analysis (Bell Direct Testimony at 12 and Appendix F) and (b) an augmented regression (Bell Direct Testimony at 13 and Appendix G). Dr. Bell used the third regression to attempt to demonstrate that the presence of the Weeks Estimator did not lead to growth in the market (Bell Direct Testimony at 13 – 14 and Appendix H).

²⁷¹ Bell Direct Testimony at 13 – 14.

²⁷² A detailed discussion of the flaws contained in Dr. Bell's regression analyses and the implications of those flaws is contained in the **Appendix**.

damages of [REDACTED] represent a conservatively high measure of First Response's lost profit damages.

B.

91. Although the lost profits measure based upon the market share allocation approach above represents my primary approach to determine lost profits damages in this matter, alternative calculations of First Response's lost sales (and hence lost profits) caused by the at-issue advertising can be performed [REDACTED]

[illegible]

- [REDACTED]
- [REDACTED]
- [REDACTED]

(a) [REDACTED]

[REDACTED] (b) the number of weeks in the relevant

[illegible]

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the Weeks Estimator to the sales attributable to the at-issue advertising (e.g., 21.9% for the launch package and 17.3% for the revised package). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. Calculations Based Upon First Response Sales During Period Weeks Estimator Was Unavailable

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

96. Following the liability portion of this litigation, SPD stopped shipments of the Weeks Estimator product between July 1, 2015 and September 1, 2015.²⁸² The Weeks Estimator resumed shipments for approximately a year.²⁸³ [REDACTED]

[REDACTED]

[REDACTED]

that the Weeks Estimator was formally withdrawn from the market. [REDACTED]

[REDACTED]

[REDACTED]

²⁸² Wood Direct Testimony at ¶ 19.

²⁸³ SPD stopped shipments of the Weeks Estimator on September 12, 2016 and the product was formally withdrawn from the market on November 16, 2016. Wood Direct Testimony at ¶ 20.

[REDACTED] This period with significantly reduced sales of the Weeks Estimator represents a period after the launch of the Weeks Estimator during which First Response's sales effectively were not affected by competition with the Weeks Estimator. Hence, this period can be used to evaluate the general market effects of the Weeks Estimator on First Response products by comparing First Response sales between this period and an otherwise reasonably comparable period during which the Weeks Estimator was available for consumer purchase.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[illegible]

[REDACTED]

[illegible]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

-
- [REDACTED]
 - [REDACTED]
 - [REDACTED]

[REDACTED]

[REDACTED]

102. It should be noted that the lost profits calculation above overstates C&D's losses. Specifically, while the Weeks Estimator was off the market in Q3 2015, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED], simple comparisons of First Response sales between (a) the period that the Weeks Estimator was not being shipped and (b) periods that the Weeks Estimator was available to consumers would overstate the impact of the Weeks Estimator generally (and the at-issue advertising specifically) on First Response sales.²⁹⁷ First Response sales increases during the periods that the Weeks Estimator was unavailable would conflate the competitive pressures that First Response may have faced from the Weeks Estimator with the effects of [REDACTED] and hence would not isolate the impact of the Weeks Estimator on First Response sales.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

D. Summary Of Lost Profits Damages

103. Under the market share allocation approach (i.e., the primary approach), C&D's lost profits attributable to the at-issue advertisements are approximately [REDACTED]. Under the two alternative approaches, C&D's lost profits attributable to the at-issue advertisements are approximately [REDACTED]. Each of these calculations was conducted under the assumption that all of the measures of lost sales isolate the effect of the at-issue advertising. In other words, generally these calculations did not consider the additional dynamics and general sales fluctuations and variability in the marketplace that were discussed in **Section IX**.²⁹⁸ However, the evidence set forth in **Section IX** regarding economic causation demonstrates that these calculations likely overstate the effect of the at-issue advertising and hence the measures of lost profits presented herein are conservatively high.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 15th day of September, 2017, in Dallas, Texas.



Keith R. Ugone, Ph.D.

[REDACTED]

Demonstrative, Ugone Exhibit 1

Facts, Data, and Other Information Considered

Description	Bates Prefix	Start	End
<u>Legal Documents</u>			
Church & Dwight Co., Inc.'s 30(b)(6) Notice of Deposition to SPD Swiss Precision Diagnostics GmbH dated December 27, 2017			
Church & Dwight Co., Inc.'s Responses and Objections To SPD Swiss Precision Diagnostics, GmbH's Third Set of Interrogatories			
Court Order of August 6, 2015 Denying Motion to Stay of Damages Phase Pending Appeal			
Declaration of Ryan Daly In Support of SPD Swiss Precision Diagnostics GmbH's Opposition to Church & Dwight Co., Inc.'s Motion To hold SPD In Contempt and For Other Relief dated January 24, 2017			
Defendant SPD Swiss Precision Diagnostics GmbH's Notice of Taking Rule 30(b)(6) Deposition of Church & Dwight Co., Inc. dated July 21, 2014			
Defendant SPD Swiss Precision Diagnostics GmbH's Supplemental Federal Rule of Civil Procedure 26(a)(1) Disclosures dated March 3, 2017			
Memorandum & Order for Denying Church & Dwight's Motion and SPD's Sealing Application Denied dated July 26, 2017 by US District Judge Alison J. Nathan			
Opinion & Order filed July 1, 2015			
Permanent Injunction Order filed August 26, 2015			
SPD Swiss Precision Diagnostics GmbH's Rule 30(b)(6) Notice of Deposition to Church & Dwight Co., Inc. dated January 12, 2017			
Subpoena to Testify at a Deposition in a Civil Action to Taylor Hoel dated May 15, 2017			
<u>Deposition Transcripts</u>			
30(b)(6) Deposition of Deborah Krall taken February 21, 2017 and Associated Exhibits (Exhibits Listed Separately)			
30(b)(6) Deposition of Wendy Bishop taken February 22, 2017 and Associated Exhibits (Exhibits Listed Separately)			
Deposition of Cristobal Montero taken February 16, 2017 and Associated Exhibits (Exhibits Listed Separately)			
Deposition of Dr. Tulin Erdem taken May 11, 2017			
Deposition of Gregory K. Bell, Ph.D., taken May 3, 2017			
Deposition of Keith R. Ugone, Ph.D., taken May 10, 2017			
Deposition of Leah Wood Miramonti taken April 5, 2017 and Associated Exhibits (Exhibits Listed Separately)			
Deposition of Ryan M. Daly taken February 10, 2017 Associated Exhibits (Exhibits Listed Separately)			
Deposition of Simon Alaluf taken April 11, 2017 and Associated Exhibit (Exhibit Listed Separately)			
Deposition of Stacey Feldman taken October 2, 2014 and Associated Exhibits (Exhibits Listed Separately)			
Deposition of Taylor W. Hoel taken May 16, 2017 and Associated Exhibits (Listed Separately)			
Deposition of Timothy Snowden taken August 27, 2014 and Select Associated Exhibits (Exhibits Listed Separately)			

Facts, Data, and Other Information Considered

Description	Bates Prefix	Start	End
<u>Deposition Exhibits</u>			
Alaluf Deposition Exhibit 1: Ugone Report Appendix A			
Bishop Deposition Exhibit 45 : Church & Dwight Co. Inc. FQ3 2013 Earnings Call Transcript, November 1, 2013			
Bishop Deposition Exhibit 46: Church & Dwight Co. Inc. FQ4 2013 Earnings Call Transcript, February 4, 2014			
Bishop Deposition Exhibit 47: Church & Dwight Co. Inc. Q3 2015 Earnings Call Transcript, November 2, 2015			
Bishop Deposition Exhibit 48: Church & Dwight Co. Inc. Q4 2014 Earnings Call Transcript, February 3, 2015			
Bishop Deposition Exhibit 49: Church & Dwight Co. Inc. Q2 2014 Earnings Call Transcript, August 1, 2014			
Bishop Deposition Exhibit 50: Church & Dwight Co. Inc. Q1 2015 Earnings Call Transcript, May 7, 2015			
Bishop Deposition Exhibit 51: Church & Dwight Co. Inc. Q2 2015 Earnings Call Transcript, August 4, 2015			
Daly Deposition Exhibit 2: January 12, 2017 Email from Harold P. Weinberger to Michael T. Mervis regarding Church & Dwight v. SPD			
Deposition of Hal Poret taken May 11, 2017 and Associated Exhibits (Listed Separately)			
Feldman Deposition Exhibit 2: Declaration of Stacey Feldman in Support of Plaintiff's Motion for a Preliminary Injunction			
Feldman Deposition Exhibit 6: Clearblue Package Image			
Feldman Deposition Exhibit 7: Clearblue Package Image			
Feldman Deposition Exhibit 8: November 20, 2012 Email from Sarah Johnson to Denise Johnson-Lyles regarding Preview of Response to Section 3b Received Nov 8 With Attached k112870 5001 - SPD Response to FDA comments 11- 8- 12.docx; 510k_summary.docx; INDICATIONS FOR USE FORM OIR.docx; CB Carton VR3 Rear portrait Full size copy.pdf; CB Carton VR3 Front Full size copy.pdf; leaflet actual size instructions copy.pdf; leaflet actual size Q and A copy.pdf			
Hoel Deposition Exhibit 2: Taylor Hoel LinkedIn Profile			
Hoel Deposition Exhibit 9: P&G, U.S.'s Largest Advertiser, Is Putting Its North American Media Business in Review dated May 15, 2015 (www.adweek.com)			
Miramonti Deposition Exhibit 03: Ugone Report Appendix C			
Miramonti Deposition Exhibit 04: Ugone Report Appendix E			
Miramonti Deposition Exhibit 07: Ugone Report Appendix G			
Miramonti Deposition Exhibit 08: Ugone Report Appendix I			
Miramonti Deposition Exhibit 12: Ugone Report Appendix M			
Miramonti Deposition Exhibit 13: YouTube: Discover Clearblue Digital Pregnancy Test with Weeks Indicator (UK version)			
Miramonti Deposition Exhibit 15: Ugone Report Appendix B			
Miramonti Deposition Exhibit 16: Ugone Report Appendix L			

Facts, Data, and Other Information Considered

Description	Bates Prefix	Start	End
Miramonti Deposition Exhibit 17: Ugone Report Appendix D			
Poret Deposition Exhibit 3: Harvard Business School: Concept Testing, Revised 3/23/92			
Poret Deposition Exhibit 4: Expert Report of Keith R. Ugone date March 24, 2017			
Poret Deposition Exhibit 5: Rebuttal Testimony of Hal Poret dated February 25, 2015			
Poret Deposition Exhibit 7: Opinion & Order for a Proposed Permanent Injunction dated July 1, 2015 by US District Judge Alison J. Nathan			
Poret Deposition Exhibit 9: Permanent Injunction Order dated August 26, 2015 by US District Judge Alison J. Nathan			
Bishop Deposition Exhibit 38: Nielsen Data	DTX	183	183
Miramonti Deposition Exhibit 05: Various Leo Burnett Scheduling Forms for Procter & Gamble	SPD-NY-D	041500	041517
Miramonti Deposition Exhibit 06: FY14/15 Traffic Sheet	SPD-NY-D	041518	041527

Testimony and Trial Exhibits from Liability Phase

Direct Testimony Declaration of Joel H. Steckel, Ph.D. dated February 17, 2015 and Associated Exhibits

Direct Testimony of Cristobal Montero dated February 16, 2015

Direct Testimony of Dr. Alan J. Cox dated February 17, 2015 and Associated Exhibits

Direct Testimony of Dr. Tulin Erdem and dated February 3, 2015 Associated Exhibits

Direct Testimony of Hal Poret dated February 3, 2015 and Associated Exhibits

Direct Testimony of Kirsten Suarez dated February 17, 2015 and Associated Exhibits

Direct Testimony of Ryan Daly dated February 17, 2015 and Associated Exhibits

Direct Testimony of Stacey Feldman dated February 3, 2015 and Associated Exhibits

Rebuttal Testimony of Dr. Tulin Erdem dated February 25, 2015 and Associated Exhibits

Rebuttal Testimony of Stacey Feldman dated February 25, 2015 and Associated Exhibits

DTX 072 F02698-E0033-00082321.xlsx

First Response Share of Shelf Opportunity Analysis Presentation

Market Data: xAOC (DTX 095 F02698-E0033-00067534.xlsx)

DTX	072	072
DTX	078	078
DTX	095	095

Testimony and Trial Exhibits from Damages Phase

Direct Testimony of Cristobal Montero dated September 14, 2017 and Associated Demonstratives

Direct Testimony of Deborah Krall dated August 24, 2017

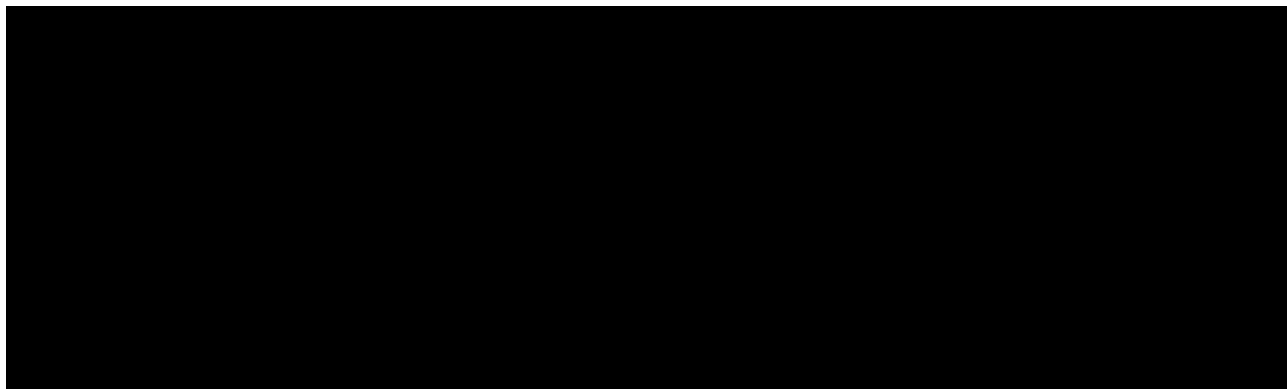
Direct Testimony of Douglas E. Schoen dated September 7, 2017

Direct Testimony of Gregory K. Bell dated August 25, 2017 and Appendices

Facts, Data, and Other Information Considered

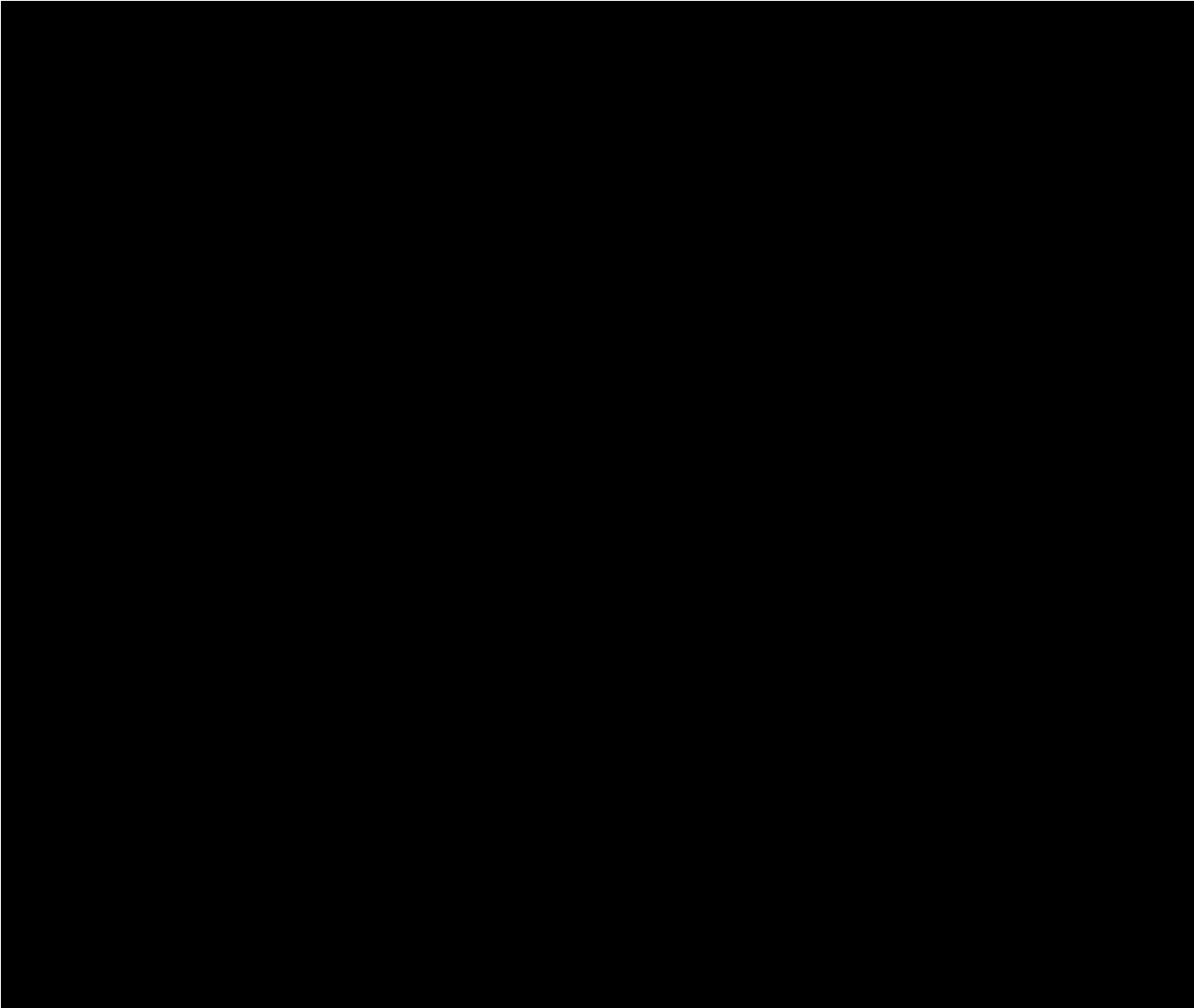
Description	Bates Prefix	Start	End
Direct Testimony of Leah Wood Miramonti dated September 12, 2017 and Associated Demonstratives			
Direct Testimony of Simon Alaluf dated September 11, 2017 and Associated Demonstratives			
Direct Testimony of Taylor Hoel dated September 13, 2017			
Direct Testimony of Wendy Bishop dated August 18, 2017			
<u>Expert Reports and Associated Documentation</u>			
Damages Rebuttal Expert Report of Dr. Tulin Erdem dated April 21, 2017			
Expert Report of Gregory K. Bell, Ph.D., dated March 24, 2017 and Supporting Regression Documentation			
Expert Report of Hal Poret in Matter of Church & Dwight v. SPD Swiss Precision Diagnostics dated April 21, 2017			
Expert Report of Hal Poret in Matter of Church & Dwight v. SPD Swiss Precision Diagnostics: Survey to Determine Consumer Perception regarding Clearblue Advanced Pregnancy Test with Weeks Estimator dated December 1, 2014 and Associated Documentation			
Expert Report of Keith R. Ugone, Ph.D. dated March 24, 2017			
Expert Report: Pregnancy Test Product Study by Douglas E. Schoen dated March 21, 2017			
Letter from Gregory K. Bell to Michael T. Mervis dated April 20, 2017 correcting an error in the Bell Report dated March 24, 2017			
Pregnancy Test Kit Survey by ORC International, August 2014 (Part of Poret Survey)			
Rebuttal Expert Report of Gregory K. Bell, Ph.D., dated April 21, 2017 and Supporting Regression Documentation			
Rebuttal Expert Report of Keith R. Ugone, Ph.D. dated April 21, 2017			
Rebuttal Report of Alan J. Cox, Ph.D. dated December 15, 2014			
Report of Alan J. Cox, Ph.D. dated December 1, 2014			

Documents Produced by Church & Dwight

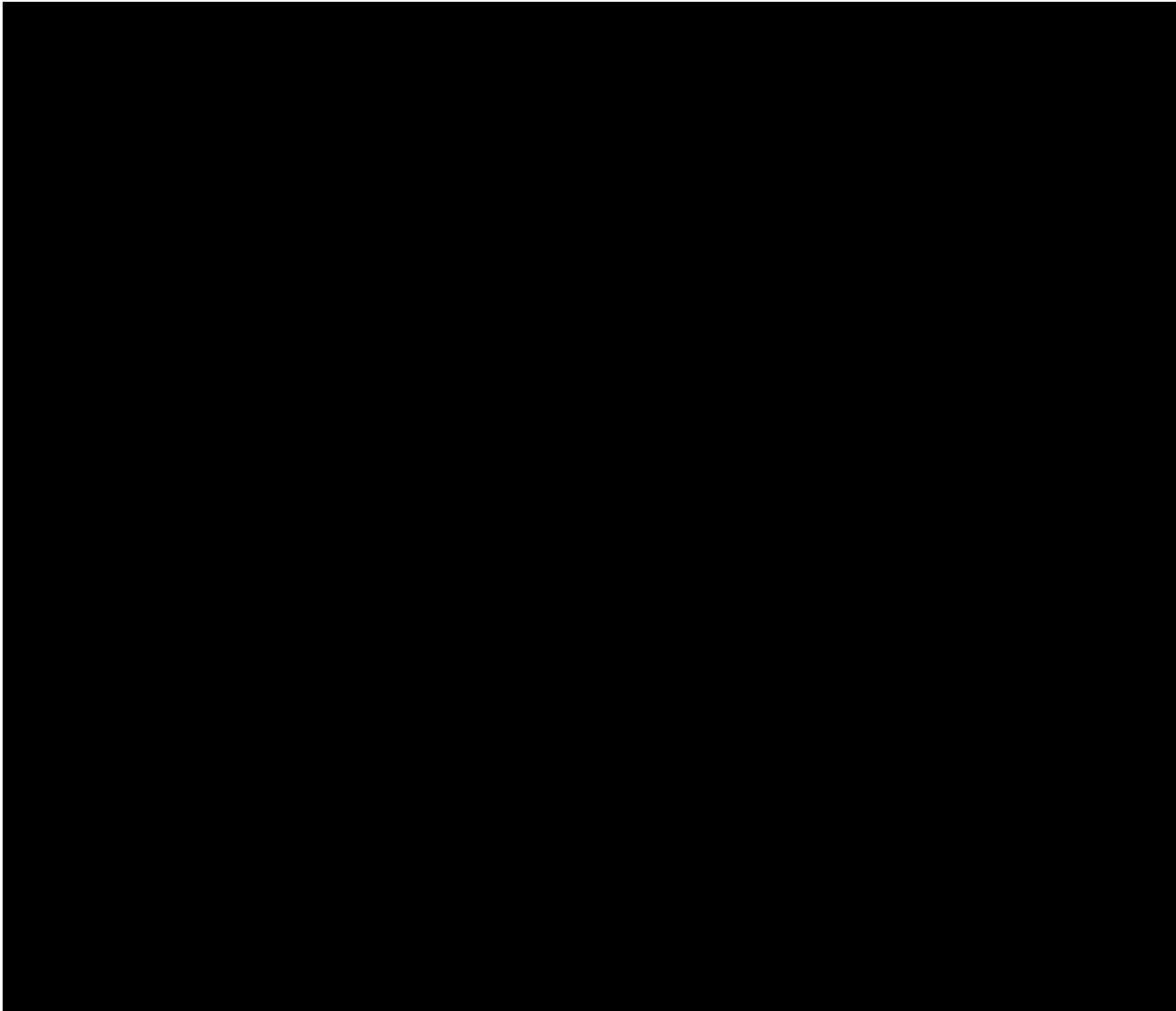


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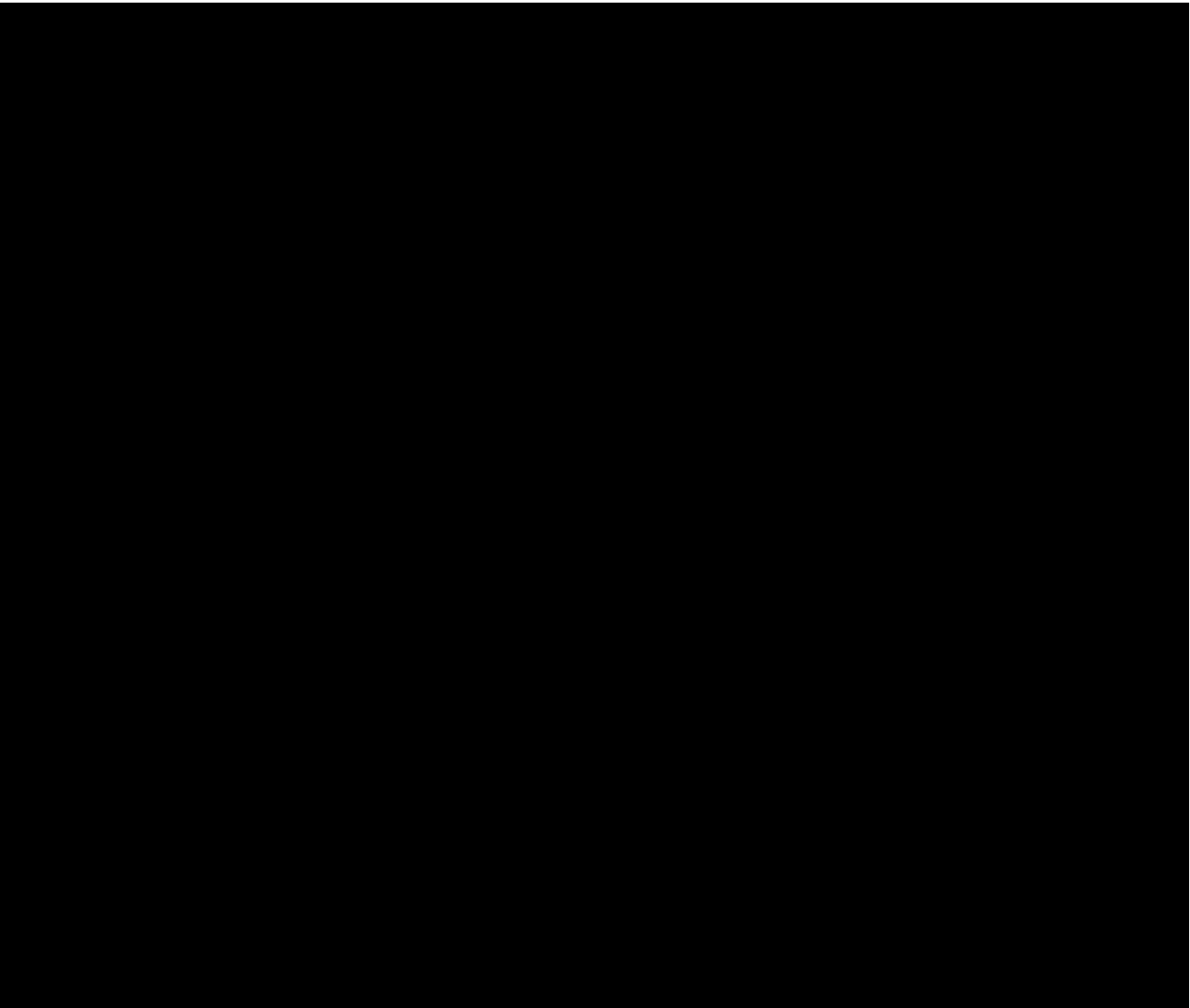
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Facts, Data, and Other Information Considered

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	CHD	00002389	00002389
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	CHD	00002404	00002408
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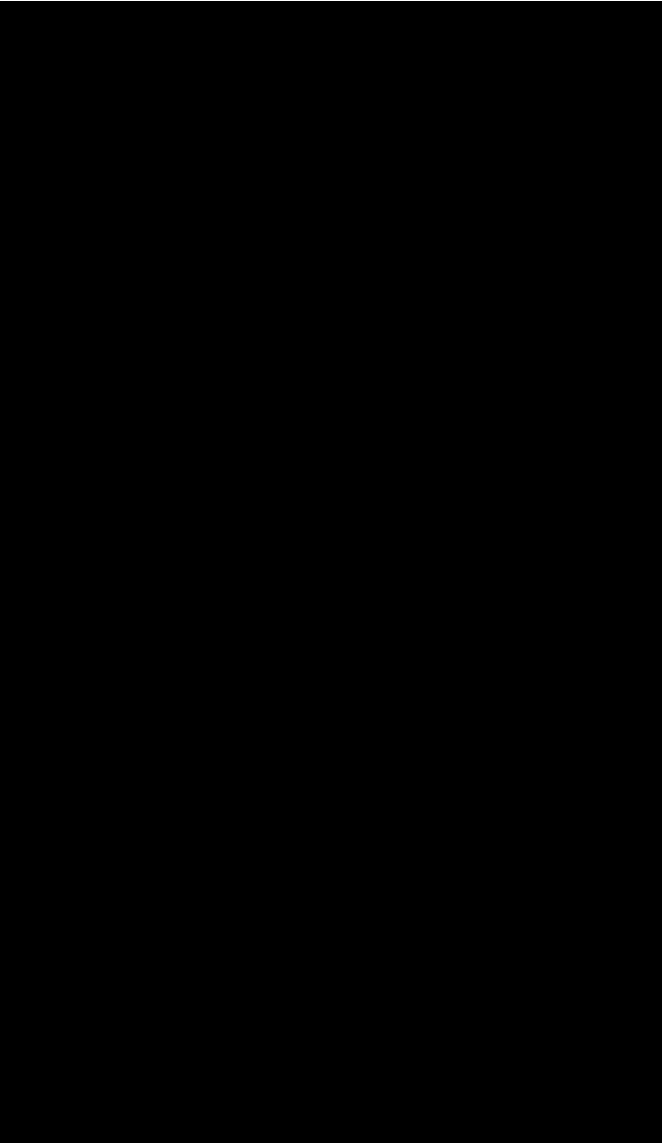
Facts, Data, and Other Information Considered

Description	Bates Prefix	Start	End
	CHD	00002695	00002695
	CHD	00002796	00002796
	CHD	00002917	00002917
	CHD	00002956	00002956
	CHD	00002998	00002998
	CHD	00003033	00003033
	CHD	00003054	00003054
	CHD	00003105	00003105
	CHD	00003151	00003151
	CHD	00003161	00003163
	CHD	00003214	00003216
	CHD	00003219	00003221
	CHD	00003224	00003226
	CHD	00003247	00003247
	CHD	00003250	00003252
	CHD	00003256	00003258
	CHD	00003355	00003357
	CHD	00003424	00003424
	CHD	00003541	00003541
	CHD	00003795	00003795
	CHD	00003820	00003821
	CHD	00003834	00003837
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	CHD	00003900	00003900
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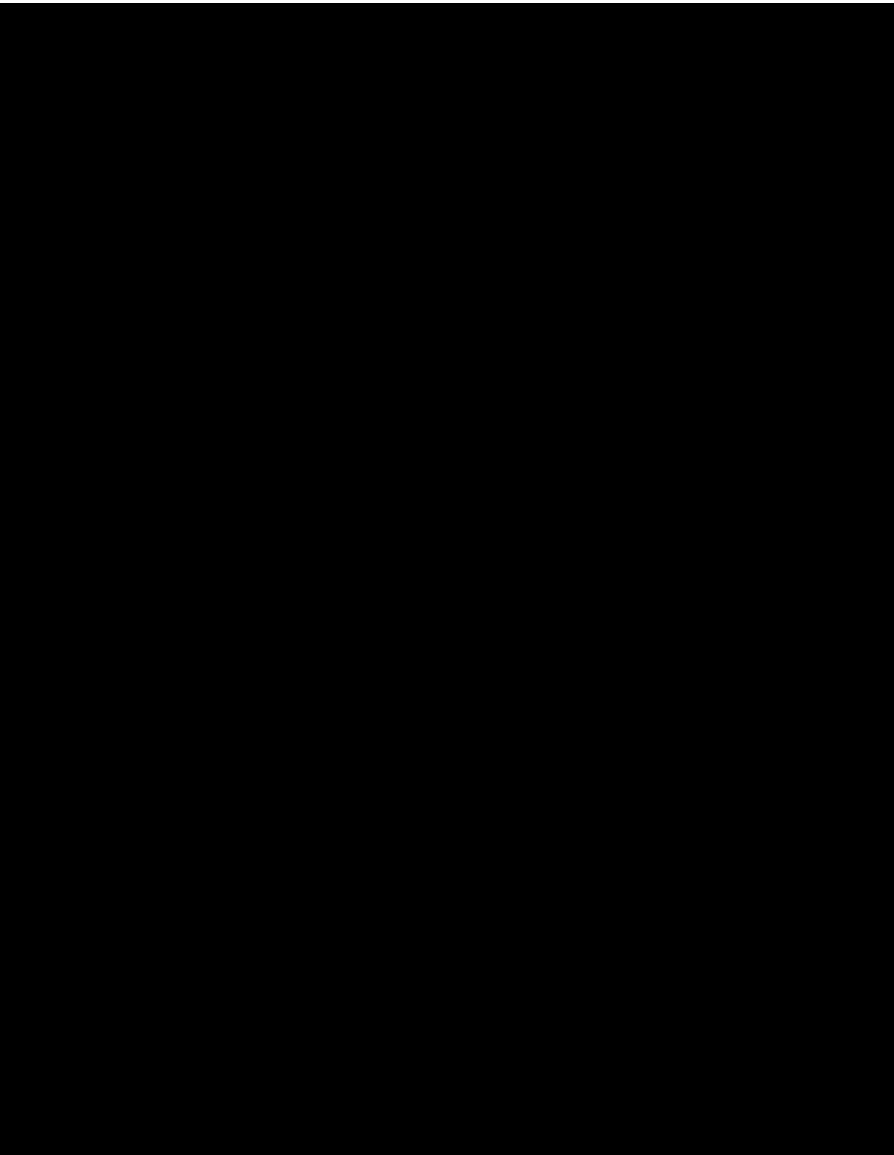
Facts, Data, and Other Information Considered

Description	Bates Prefix	Start	End
	CHD	00004051	00004052
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	CHD	00005657	00005659
	CHD	00006197	00006199
	CHD	00006332	00006368
	CHD	00006467	00006680
	CHD	00007380	00007380
	CHD	00007570	00007572
	CHD	00008045	00008047
	CHD	00008648	00008649
	CHD	00008650	00008662
	CHD	00008663	00008664
	CHD	00008665	00008677
	CHD	00008678	00008678
	CHD	00008679	00008681
	CHD	00008682	00008682
	CHD	00008683	00008685
	CHD	00008686	00008687
	CHD	00008688	00008699
	CHD	00008700	00008701
	CHD	00008702	00008713
	CHD	00008714	00008714
	CHD	00008715	00008717

Facts, Data, and Other Information Considered

Description	Bates Prefix	Start	End
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	CHD	00008720	00008722
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	CHD	00008741	00008747
	CHD	00008748	00008753
	CHD	00008754	00008756
	CHD	00008757	00008761
	CHD	00008762	00008764
	CHD	00008765	00008769
	CHD	00008770	00008772
	CHD	00008773	00008774
	CHD	00008775	00008777
	CHD	00008778	00008778
	CHD	00008779	00008784
	CHD	00008785	00008787
	CHD	00008788	00008788
	CHD	00008789	00008789
	CHD	00008790	00008790
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	CHD	00008792	00008792
	CHD	00008793	00008793
	CHD	00008794	00008794
	CHD	00008795	00008795
	CHD	00008796	00008796
	CHD	00008797	00008797

Facts, Data, and Other Information Considered

Description	Bates Prefix	Start	End
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	CHD	00008806	00008806
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	CHD	00008811	00008811
	CHD	00008812	00008812
	CHD	00008813	00008813
	CHD	00008814	00008814
	CHD	00008815	00008815
	CHD	00008816	00008816
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	CHD	00008819	00008819
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	CHD	00008821	00008821
	CHD	00008822	00008822
	CHD	00008823	00008823
	CHD	00008824	00008824
	CHD	00008825	00008825